

LFC Requester:

Kelly Klundt

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date January 19, 2016

Bill No: HB50

Sponsor: Representative Conrad James

Agency Code: 305

Short Termination of Rights for

Person Writing Jennifer Salazar, AAG

Title: Certain Parents

Phone: 827-6990 **Email** jsalazar@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

House Bill 50 seeks to amend NMSA 1978, § 40-4-9.1 which addresses the standards for determining joint custody of children. The amendment makes minor grammatical changes as well as updates legal citations referenced in the statute. The most substantive change is found on page 9. The proposed amendment would allow a custodial parent to petition the court for termination of a noncustodial parent's parental rights when the noncustodial parent has been convicted of criminal sexual penetration resulting in the conception and birth of the affected child. The new language would require a court to grant the custodial parent's petition when the court determines that the child was conceived as a result of a criminal sexual penetration for which the noncustodial parent was convicted.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

This amendment would align with Section 32A-5-19(C) of the Adoption Act, NMSA 1978, §§ 32A-5-1 to -45. Pursuant to this provision, the consent to adoption or relinquishment of parental rights is not required from a parent who conceived a child as a result of rape or incest. Similarly, this provision would allow for the custodial parent/victim to petition for the termination of a noncustodial parent's parental rights in cases where a child is conceived as a result of rape.

In Christian Child Placement Serv. of New Mexico Christian Children's Home v. Vestal, the New Mexico Court of Appeals upheld the substantive due process and equal protection challenges to Section 32A-15-19(C). 1998-NMCA-098, 125 N.M. 426, 962 P.2d 1261. The Court found no substantive due process violation when the court terminated the parental rights of a father who plead guilty to criminal sexual penetration of a child, and stated that Section 32A-15-19(C) was "rationally related to the State's legitimate interest in protecting children and preventing their exploitation." Id. ¶ 14. The Court also stated that "[a]n individual who has

committed criminal sexual penetration of a child, thereby impregnating her . . . is not similarly situated to an unmarried man who has fathered a child by a consenting adult woman” and went on to explain that “the Legislature has a legitimate statutory purpose in seeking to protect minor children from sex offenders and sexual abuse, and can properly deprive such perpetrators of the fruits of their misconduct.” Id. ¶ 16. Following this reasoning, a Court would most likely follow the reasoning articulated in Vestal to uphold the constitutionality of HB 50 and would likely find that the state has a legitimate interest in protecting children.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

The proposed amendment would not afford the court any discretion in making the decision to terminate the noncustodial parent’s parental rights; instead, the proposed amendment states that “the court **shall** grant the petition if the court determines that the child was conceived as a result of the criminal sexual penetration for which the noncustodial parent was convicted.”

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A